

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 STEVEN V. ADLER  
Supervising Deputy Attorney General  
3 DOUGLAS LEE, State Bar No. 222806  
Deputy Attorney General  
4 California Department of Justice  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101

6 P.O. Box 85266  
San Diego, CA 92186-5266  
7 Telephone: (619) 645-2580  
Facsimile: (619) 645-2061

8 Attorneys for Complainant

9  
10 **BEFORE THE**  
**RESPIRATORY CARE BOARD**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. 1H 2007 699

13 WILLIE JAMES CARTER, JR.  
14 1212 Calle Jules, Apartment #1  
Vista, CA 92084

**STATEMENT OF ISSUES**

15 Respondent.  
16

17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in  
20 her official capacity as the Executive Officer of the Respiratory Care Board of California,  
21 Department of Consumer Affairs.

22 2. On or about December 24, 2007, the Respiratory Care Board of California,  
23 Department of Consumer Affairs received an application for a Respiratory Care Practitioner  
24 license from Willie James Carter, Jr., (Respondent). On or about December 6, 2007, respondent  
25 certified under penalty of perjury to the truthfulness of all statements, answers, and  
26 representations in the application. The Board denied the application on or about June 13, 2008.  
27 On or about June 23, 2008, Respondent requested a hearing to contest the denial of his  
28 application for licensure as a Respiratory Care Practitioner.

## JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3732 of the Code states, in pertinent part:

"...."

"(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

7. Section 3750 of the Code states, in pertinent part:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

"...."

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

"...."

///

“(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

“ ”  
...

“(p) A pattern or substandard care.”

8. California Code of Regulations (CCR), title 16, section 1399.370, states, in pertinent part:

“For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

“(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Act.

“ ”  
...

## COST RECOVERY

9. Section 3753.5, subdivision (a) of the Code states:

"In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case."

10. Section 3753.7 of the Code states:

"For purposes of the Respiratory Care Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees."

///

///

1                   11.     Section 3753.1, subdivision (a), of the Code states:  
2                   "An administrative disciplinary decision imposing terms of probation may  
3 include, among other things, a requirement that the licensee-probationer pay the monetary  
4 costs associated with monitoring the probation."

5                   **FIRST CAUSE FOR DENIAL OF APPLICATION**

6                   **(Dishonest Act)**

7                   12.     Respondent's application is subject to denial under sections 3732,  
8 subdivision (b), 3750, subdivisions (g) and (j), of the Code, in that respondent committed a  
9 dishonest act while enlisted in the United States Air Force. The circumstances are as follows:

10                   (a)     On or about August 28, 2004, respondent was an active member of the  
11 United States Air Force.

12                   (b)     On or about August 28, 2004, respondent entered the United States Air  
13 Force Base Exchange, removed the plastic from a new compact disc, concealed the compact disc  
14 in a second container, and returned the empty compact disc container to the display shelf.

15                   (c)     As a result of this incident, respondent was detained and charged with  
16 violating Uniform Military Code of Justice section 3 [larceny/theft]. Respondent received a  
17 reduction in pay grade.

18                   **SECOND CAUSE FOR DENIAL OF APPLICATION**

19                   **(Substandard Care)**

20                   13.     Respondent's application is further subject to denial under sections 3732,  
21 subdivision (b), and 3750, subdivision (p), of the Code, in that he demonstrated a pattern of  
22 substandard care as a phlebotomist. The circumstances are as follows:

23                   (a)     On or about May 10, 2006, respondent was certified as a Certified  
24 Phlebotomy Technician I from the California Department of Health Services. Said licensed  
25 expired on or about May 10, 2008.

26                   (b)     On or about October 31, 2007, respondent resigned from his position as a  
27 phlebotomist at Scripps Memorial Hospital due to three incidents whereby he drew blood and  
28 made identification errors. Those incidents are as follows:

(1) On or about August 31, 2007, respondent drew blood on the wrong patient and subsequently mislabeled the blood specimen resulting in the specimen having to be redrawn;

(2) On or about September 8, 2007, respondent placed two patient labels on one blood specimen. Respondent further recorded the results of the blood draw in the wrong patient's medical record. Both patients had to have their blood redrawn; and,

(3) On or about October 20, 2007, respondent drew blood from the wrong patient.

## PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Denying the application of WILLIE JAMES CARTER, JR., for a Respiratory Care Practitioner's License;

2. Directing Willie James Carter, Jr., to pay the Respiratory Care Board of California the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and,

3. Taking such other and further action as deemed necessary and proper.

DATED: July 17, 2008

Original signed by Liane Zimmerman for:  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant